

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM INC, *et al.*,

Plaintiffs,

v.

VIVCIC, *et al.*,

Defendants.

Case No. C23-486-JHC-MLP

ORDER

This matter is before the Court on Plaintiffs Amazon.com, Inc., and Amazon.com Services LLC's (together, "Amazon" or "Plaintiffs") *Ex Parte* Motion for Alternative Service. (Mot. (dkt. # 35).) Having considered Plaintiffs' submissions, the governing law, and the balance of the record, the Court GRANTS Plaintiffs' Motion (dkt. # 35).

**I. BACKGROUND**

Plaintiffs have filed an amended complaint alleging Defendants Yan Li, Xiwei Chen (together, "Defendants"), and "Doe Defendants 1-10" acted in concert to fraudulently assert copyrights in order to remove content and product listings from Amazon's online store. (Am. Compl. (dkt. # 30) at ¶¶ 8-11.) Plaintiffs allege Defendants did so by operating the "Cunq Ylo" Amazon Selling Account, which was then used to create the "Vivcic" Amazon Brand Registry

1 account with the European Union Intellectual Property Office trademark “Vivcic.” (*Id.* at  
2 ¶¶ 9-10; Mot. at 3.) Plaintiffs’ investigation indicates Defendants are likely located in China,  
3 because all of the IP addresses used to access the Cuncq Ylo Selling Account are located in China.  
4 (First Commerson Decl. (dkt. # 36) at ¶ 2.)

5 Plaintiffs seek authorization for alternative service because they have not been able to  
6 identify Defendants’ locations within China. (*See* First Commerson Decl. at ¶ 4; Second  
7 Commerson Decl. (dkt. # 39) at ¶ 2-5.) Plaintiffs propose to serve Defendants via the email  
8 address used to open the Cuncq Ylo Amazon Selling Account. (Mot. at 4-5.) They additionally  
9 propose to serve Defendants at two email addresses registered with two bank accounts that  
10 received proceeds from the Cuncq Ylo Amazon Selling Account. (*Id.*; First Commerson Decl. at  
11 ¶ 3 (Yan Li registered a PingPong account and Xiwei Chen registered a Payoneer account).)  
12 Plaintiffs sent test emails to the three email addresses and did not receive error notices, bounce  
13 back messages, or other indications that the test emails failed to deliver. (First Commerson Decl.  
14 at ¶ 5.)

## 15 II. DISCUSSION

16 Federal Rule of Civil Procedure 4(f) permits service of process on individuals in foreign  
17 countries by: (1) internationally agreed methods such as those authorized by the Hague  
18 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or  
19 Commercial Matters (“Hague Convention”); (2) if there is no internationally agreed means, in  
20 accordance with the foreign country’s law; or (3) by “other means not prohibited by international  
21 agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). To obtain a court order under Rule  
22 4(f)(3), a plaintiff must “demonstrate that the facts and circumstances of the present case  
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necessitated the district court's intervention." *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002).

In addition to the requirements of Rule 4(f), "a method of service of process must also comport with constitutional notions of due process." *Rio*, 284 F.3d at 1016. "To meet this requirement, the method of service crafted by the district court must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* at 1016-17 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

**A. Rule 4(f)**

Plaintiffs request Court intervention because they have not located valid physical addresses for service despite extensive investigation. (Mot. at 5.) While third-party discovery reported physical addresses for each Defendant, further investigation revealed the information to be false. (First Commerson Decl. at ¶ 4.) Specifically, the house number for Xiwei Chen did not exist and nearby neighbors confirmed Xiwei Chen did not live in the neighborhood. (Second Commerson Decl. at ¶ 3.) The address for Yan Li was occupied by other people and security guards and cleaning staff reported they did not know Yan Li. (*Id.* at ¶ 4.) The Court concludes Plaintiffs have adequately shown that the Court's intervention is necessary.

Plaintiffs contend Rule 4(f)(3) and the Hague Convention allow for service by email on defendants located in China. (Mot. at 5-6.) China, like the United States, is a party to the Hague Convention.<sup>1</sup> The Hague Convention expressly "shall not apply where the address of the person

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<sup>1</sup> See Contracting Parties, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last viewed June 12, 2024).

1 to be served with the document is not known.” Hague Convention, art. 1.<sup>2</sup> Plaintiffs here have  
2 been unable to locate physical addresses for Defendants, and thus, could not utilize methods  
3 authorized by the Hague Convention. (First Commerson Decl. at ¶ 4; Second Commerson Decl.  
4 at ¶¶ 3-4.)

5 Nevertheless, whether or not the Hague Convention applies, this Court and others have  
6 concluded that email service on individuals located in China is not prohibited by it or any other  
7 international agreement. *See Rubie’s Costume Co., Inc. v. Yiwu Hua Hao Toys Co.*, 2019 WL  
8 6310564, at \*3 (W.D. Wash. Nov. 25, 2019) (email service in China “not expressly prohibited by  
9 international agreement”). The Court therefore concludes that service by email is not prohibited  
10 by international agreement. Plaintiffs have shown that an order permitting service by email  
11 would comport with Rule 4(f).

## 12 **B. Due Process**

13 The Court next considers whether service of process using email addresses registered  
14 with Defendants’ Amazon Selling Account and its linked bank accounts comports with  
15 constitutional due process—that is, whether the method of service is “reasonably calculated,  
16 under all the circumstances, to apprise interested parties of the pendency of the action and afford  
17 them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

18 Plaintiffs contend email service comports with due process because “Defendants  
19 themselves provided the email addresses for the purpose of conducting business” and test emails  
20 confirmed the addresses remain functional. (Mot. at 8.) Plaintiffs point to *Facebook, Inc. v.*  
21 *Banana Ads, LLC*, where a court authorized service via email on foreign defendants who “rely  
22 on electronic communications to operate their businesses” and for whom plaintiff had “valid  
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<sup>2</sup> Available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17> (last viewed June 12, 2024).

1 email addresses[.]” 2012 WL 1038752, at \*2 (N.D. Cal. Mar. 27, 2012). In that case, however, it  
2 appears that the defendants’ businesses were ongoing and used internet domain names that, when  
3 registered, “required [defendants] to provide accurate contact information and to update that  
4 information.” *Id.* at \*1.

5 The Court finds that service to the email addresses used to access Defendants’ current,  
6 open bank accounts are likely to provide notice. The situation is somewhat less clear, however,  
7 with regard to the email address used to operate the Cuncq Ylo Amazon Selling Account that has  
8 been closed. (*See* Am. Compl. at ¶ 48 (Amazon blocked the Cuncq Ylo Selling Account, as well  
9 as the Vivvic Brand Registry Account).) Plaintiffs do not specify when the account was closed  
10 and whether Defendants were notified.

11 Nevertheless, Plaintiffs provide evidence that the email address was actively used in  
12 operating the Cuncq Ylo Amazon Selling Account. The email address was utilized to create the  
13 Selling Account and conduct business through it. (Ong Decl. at ¶ 5.) And Plaintiffs have verified  
14 that all three email addresses remain active. (*See* First Rainwater Decl. at ¶ 5.) This provides  
15 some evidence that Defendants are still using those addresses.

16 In a similar situation in *Bright Solutions for Dyslexia*, alternative service by email was  
17 used where plaintiffs were “unable to locate [d]efendants and believed they may have moved to  
18 China.” *Bright Sols. for Dyslexia, Inc. v. Lee*, 2017 WL 10398818, at \*4 (N.D. Cal. Dec. 20,  
19 2017), *report and recommendation adopted*, 2018 WL 4927702 (N.D. Cal. Mar. 26, 2018). After  
20 issuing takedown notices, the plaintiffs obtained email addresses associated with eBay online  
21 seller accounts that defendants had used to sell allegedly counterfeit products. *Id.* at \*3. “No  
22 errors were received” when plaintiffs sent test emails to two of the addresses. *Id.* The court  
23 granted plaintiffs’ motion for alternative service by email, and granted default judgment after

1 defendants failed to respond even though “the emails had been successfully delivered with no  
2 errors.” *Id.* at \*4. The court concluded “email service was proper because [d]efendants structured  
3 their counterfeit business such that they could only be contacted by email” and, when served by  
4 email, “[t]hese emails did not bounce back.” *Id.* at \*7.

5 In contrast, in *Amazon.com Inc. v. KexleWaterFilters*, this Court denied alternative  
6 service by email because plaintiffs had not shown sufficient “indicia that the defendants would in  
7 fact receive notice of the lawsuit if the plaintiffs served them by email.” 2023 WL 2017002, at  
8 \*4 (W.D. Wash. Feb. 15, 2023). The approach in *Bright Solutions for Dyslexia* was endorsed by  
9 this Court in that case, but in *KexleWaterFilters*, the plaintiffs had “not demonstrated that the  
10 email addresses associated with [d]efendants’ Selling Accounts are still valid[.]” *Id.* Plaintiffs  
11 were permitted to “renew their motion with evidence of recent communications to [d]efendants  
12 that demonstrates that service by email is a reliable method to provide [d]efendants with notice  
13 of the pendency of this action.” *Id.*

14 Here, as in *Bright Solutions for Dyslexia*, Plaintiffs have identified email addresses that  
15 Defendants used in their online business and verified that those email addresses remain  
16 functional. As in *Bright Solutions for Dyslexia*, Defendants structured their counterfeit business  
17 such that they can only be contacted by email. Together, these circumstances provide sufficient  
18 indicia that Defendants are likely to receive notice if served through the email addresses  
19 registered to their Amazon Selling Accounts. *See also Amazon.com, Inc. v. KexleWaterFilters*,  
20 2023 WL 3902694, at \*2 (W.D. Wash. May 31, 2023) (granting renewed motion for alternative  
21 service where “Plaintiffs received no error notices or bounce-back messages with respect to the  
22 test emails”).  
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Moreover, Plaintiffs propose to “serve Defendants using an online service for service of process, RPost (www.rpost.com) that provides proof of authorship, content, delivery, and receipt[.]” (First Commerson Decl. at ¶ 6.) Service via RPost should, according to Plaintiffs’ representations to the Court, provide evidence as to whether service by email was, in fact, received. This offers reassurance that if the email addresses are not being monitored and used, then service will not be erroneously deemed completed.

The Court concludes service via the email addresses is reasonably calculated to apprise Defendants of the pendency of this action and provide them an opportunity to respond. Accordingly, the Court finds due process concerns are satisfied.

### III. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs’ Motion (dkt. # 35). Plaintiffs are authorized to serve: (1) Defendant Yan Li at yolandayan123@outlook.com and 272708976@qq.com; and (2) Defendant Xiwei Chen: yolandayan123@outlook.com; and 1873154782@qq.com.

Plaintiffs are ORDERED to complete service and file proof of service by **June 28, 2024**. The Clerk is directed to send copies of this order to the parties and to the Honorable John H. Chun.

Dated this 13th day of June, 2024.



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MICHELLE L. PETERSON  
United States Magistrate Judge